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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,162	10/22/2003	Marie D. Radatti	E-3623	5978
7590 12/03/2008 Harding, Earley, Follmer & Frailey 86 The Commons at Valley Forge East 1288 Valley Forge Road PO Box 750 Valley Forge, PA 19482-0750				
EXAMINER				
PADEN, CAROLYN A				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
12/03/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/691,162

Applicant(s)

RADATTI ET AL.

Examiner

Carolyn A. Paden

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-12, 23-24, 31, 34-35, 37-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

The indication of allowable subject matter has been withdrawn.

Examiner misread the claims. Prosecution of this application continues.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11, 23, 24, 31, 34, 37, 38 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harada (5,049,401).

Harada discloses a glucomannan product that is combined with protein. At column 6, lines 46-68, ground fish is combined with konjac paste, salt, sugar and crab extract. The combination is kneaded and molded into a planar shape, heated at 80C for 30 minutes. Then the product is scored and packed for retorting at 120 C. At column 7, lines 5-35, a similar product is made to include pork, gelatin and egg white. Although konjac glucomannan is not specifically mentioned in the patent, one of ordinary skill in the art would have expected glucomannan to be present in konjac paste. The improvement in texture is shown in Embodiment 2. Also the insoluble fiber, cellulose, is included in Harada in

embodiment 2. The claims appear to differ from Harada in the recitation of the extent of protein in the composition but animal meat and fish paste is known in the art to contain proteins. It is appreciated that the specific ratio of konjac to protein is not mentioned but no unobvious or unexpected result is seen from this feature.

In this case, Harada appears to meet all of the requirements of part a and part b of claim 31. The product of Harada would be expected to be a dough because it is kneaded and molded as if it were one. It is appreciated that gas bubbles are not mentioned but the mixing process of Harada would be expected to introduce gas bubbles into the product. It is also appreciated that binding agents are not mentioned, but the fish meat would be expected to contain proteins as binding agents for the product of Harada.

Claims 31 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawano (5,449,526).

Kawano discloses a dietary fibrous food. In the abstract konjac mannan and minced meat are combined together and kneaded to a desired shape. One of ordinary skill in the art would expect the product of Kawano to be a dough because it is kneaded. The inclusion of powdered milk and

protein powder, such as egg powder is contemplated as a subsidiary material at column 5, lines 3-23. The claims appear to differ from Kawano in the recitation of an animal based protein concentrate. Minced meat is seen to be an animal protein. Egg powder and milk powder are seen to be concentrated sources of animal protein because they are in a powdered form. It would have been obvious to one of ordinary skill in the art to use protein powder in Example 1 in order to enhance the protein content of the composition. It is appreciated that protein flour is not mentioned but no unobvious or unexpected difference is seen between the use of a flour when compared to a powder.

Claims 10 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached by dialing 571-272-

1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Carolyn Paden/

Primary Examiner 1794